

BILL ANALYSIS

Senate Research Center

S.B. 359
By: Green
Jurisprudence
10-21-92
Enrolled

BACKGROUND

The Texas Sunset Advisory Commission recently issued its report on the Board of Law Examiners. This legislation is based on the recommendations of that report.

PURPOSE

As enrolled, S.B. 359 provides for the continuation and operation of the Board of Law Examiners and provides instruction to the board as to its function and that of the supreme court in the licensing of attorneys.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 82.001(b), Government Code, to provide that two year terms for members of the Board of Law Examiners expire on August 31 of each odd numbered year and that removal from the board by the supreme court is provided for by Section 82.0021, as amended by this Act.

SECTION 2. Amends Chapter 82A, Government Code, by adding Section 82.0021, as follows:

Sec 82.0021. REMOVAL OF BOARD MEMBERS. (a) Provides the grounds for removal of a board member.

(b) Provides that existing grounds for removal of a board member does not invalidate an action of the board.

(c) Requires the executive director of the board to notify the chairman of potential grounds for removal, and requires the chairman to notify the supreme court.

SECTION 3. Amends Section 82.004, Government Code, by adding Subsection (e), to require the board to provide examination facilities accessible to the physically, mentally, or developmentally disabled.

SECTION 4. Amends Section 82.006, Government Code, to provide that the Board of Law Examiners is subject to the Texas Sunset Act.

SECTION 5. Amends Chapter 82A, Government Code, by adding Sections 82.007-82.009, as follows:

Sec. 82.007. PERSONNEL. (a) Requires the development of an intra-agency career ladder program. Requires Intra-agency postings of all non-entry level positions concurrent with any public postings.

(b) Requires the development of a system of annual performance evaluations, on which all merit pay must be based.

(c) Requires the board to provide information to its members and employees regarding the qualifications for and responsibilities of their positions.

(d) Requires the board to implement policies defining the responsibilities of the board and staff.

(e) Requires the preparation and maintenance of a written equal employment opportunity (EEO) program and sets forth the requirements for that program.

(f) Requires the EEO policy to be updated annually and to be filed with the supreme court and the governor's office.

(g) Requires the governor's office to deliver a biennial report, which may be made as part of other biennial reports, to the legislature based on information received under Subsection (f).

Sec. 82.008. PUBLIC INFORMATION. (a) Requires the board to prepare and make available public information describing the functions of the board.

(b) Requires the board to provide to the public an opportunity to testify before the board on issues under its jurisdiction. Authorizes the board to prohibit public testimony revealing examination questions or testimony relating to the moral character or fitness of an applicant for a license.

Sec. 82.009. PROGRAM ACCESSIBILITY. Requires the board to prepare and maintain a written plan for making its programs accessible to the physically, mentally, or developmentally disabled.

SECTION 6. Amends Section 82.023, Government Code, by amending Subsection (d), and adding Subsections (e), (f), and (g), as follows:

(d) Adds language to require the analysis of an applicant rejected by the board on the basis of character to include an objective list of steps that may be taken by the applicant to become qualified for a law license.

(e) Requires the board to require an applicant, if the board determines that the applicant suffers from chemical dependency, to meet with representatives of certain assistance programs, and authorizes the board to require the applicant to submit to a treatment facility for evaluation.

(f) Requires the board to assist an applicant, if the applicant is determined by the board to be chemically dependent, in working with certain assistance programs.

(g) Defines "chemical dependency," and "treatment facility," for this section.

SECTION 7. Amends Section 82.024, Government Code, as follows:

Sec. 82.024. LAW STUDY REQUIREMENTS; ELIGIBILITY FOR EXAMINATION. Provides that a person who has completed the prescribed study in an approved law school has satisfied the law study requirements and is eligible to take the bar examination. Provides criteria for an approved law school.

SECTION 8. Amends Chapter 82B, Government Code, by adding Section 82.0271, as follows:

Sec. 82.0271. RESIDENCY OR CITIZENSHIP STATUS OF APPLICANT. Prohibits denial of admission to the bar examination due to lack of United States permanent residence status or citizenship.

SECTION 9. Amends Section 82.030, Government Code, by amending Subsection (b), and adding Subsections (c), (d), (e), and (f), as follows:

(b) Adds language to require the analysis of an applicant rejected by the board on the basis of character to include an objective list of steps that may be taken by the applicant to become qualified for a law license.

(c) Requires the board to require an applicant to submit to a treatment facility for evaluation if an applicant is determined by the board to be chemically dependent.

(d) Requires the board to assist an applicant, if the applicant is determined by the board to be chemically dependent, in working with certain assistance programs.

(e) Prohibits the board from denying an applicant to take the bar examination solely because the applicant suffers or appears to suffer from chemical dependency or has been convicted of or is on probation for a first offense DWI.

(f) Defines "chemical dependency," and "treatment facility," for this section.

SECTION 10. Amends Section 82.031(a), Government Code to add language to require the supreme court to attempt to appoint to district committees on admissions persons who accurately represent the general public.

SECTION 11. Amends Section 82.035, Government Code, as follows:

Sec. 82.035. New title: **AUDIT; FINANCIAL REPORT.**

(b) Requires the board to prepare a detailed, written annual financial report in accordance with the General Appropriations Act, and to file the report with the supreme court, the governor, and the presiding officer of each house of the legislature.

SECTION 12. Amends Section 82.036, Government Code, by deleting current Subsections (a), (b), and (c), and adding language that requires the supreme court to make rules and regulations regarding admitting attorneys from other jurisdictions to practice law in this state as the court deems proper and just. Requires all such attorneys to submit satisfactory proof of good moral character.

SECTION 13. Amends Chapter 82B, Government Code, by adding Section 82.038, as follows:

Sec. 82.038. **PROBATIONARY LICENSE FOR APPLICANT SUFFERING FROM CHEMICAL DEPENDENCY.** (a) Requires the board to notify an applicant if the board determines that the applicant suffers from chemical dependency.

(b) Requires an applicant to file a petition in the district court of Travis County within 60 days of receiving notice of the board's determination to obtain judicial review of the board's determination. Requires the petition to name the board as the defendant and to be served on the executive director of the board. Requires the board to file a certified record of the proceedings before the board prior to the date on which an applicant may obtain a default judgement.

(c) Provides that a party is not entitled to a jury in a judicial review of the board's determination regarding chemical dependency. Prohibits the court from substituting its judgement for that of the board as to the weight of evidence on questions submitted to the board's discretion. Requires the court to affirm the board's decision if the decision is reasonably supported by substantial evidence in view of the reliable and probative evidence in the record as a whole.

(d) Prohibits the board from denying a person who successfully takes the bar examination a probationary license solely because the applicant suffers or appears to suffer from chemical dependency or has been convicted of or is on probation for a first offense DWI.

(e) Requires the board to specify the conditions of a probationary law license.

Requires that the conditions protect the public from the potential harm the person might cause. Sets forth certain conditions that a probationary license may include.

(f) Provides that a probationary license expires two years after it was issued. Authorizes a person who holds a probationary license to apply for a renewal of that license or for a regular license. Authorizes the board, after redetermination of the applicant's character, to recommend that the supreme court grant a regular law license. Requires that the redetermination include an evaluation from a treatment facility. Prohibits the board from recommending that a person be granted a regular law license unless the person has successfully completed treatment and has been free from chemical dependency for the preceding two years.

(g) Requires the supreme court to adopt rules under which the board and the State bar of Texas jointly develop and fund a program for people who have been issued a probationary license.

(h) Provides that a probationary license may be immediately revoked if the person violates a condition of probation.

(i) Defines "chemical dependency," "controlled substance," "treatment facility," and "treatment," for this section.

SECTION 14. (a) Makes application of this Act prospective.

(b) Requires the first policy statement required under this Act to be filed by November 1, 1991.

SECTION 15. Repealer: Section 82.026, Government Code.

SECTION 16. Effective date: September 1, 1991.

SECTION 17. Emergency Clause.